

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1036 of 1998

in

SPECIAL CIVIL APPLICATION No 6588 of 1998

with

Civil Application No. 7776 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

MANGILAL MANMALJI SHAH

Versus

SURAT MUNICIPAL CORPORATION

Appearance:

MR SUDHANSHU S PATEL for Appellant
MR PRASHANT G DESAI for Respondents No. 1 and 2.
MR UNMESH D SHUKLA for Respondent No. 3

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.M.KAPADIA

Date of decision: 14/10/98

ORAL JUDGEMENT (Per C.K. Thakker, J.):

Admitted. Mr. P.G. Desai, learned counsel appears and waives service of notice of admission on behalf of respondents No.1 and 2 and Mr. Unmesh D. Shukla, learned counsel appears and waives service of notice of admission on behalf of respondent No.3. In the facts and circumstances of the case, the matter is taken up for final hearing today.

This LPA is filed against summary dismissal of Special Civil Application No. 6588 of 1998 on August 18, 1988, by learned Single Judge. The appellant/original petitioner filed the above petition for quashing and setting aside 'raja chhithi' dated July 18, 1998, granted by respondent No.1, Surat Municipal Corporation in favour of Rambhai Ratanji Ahir, respondent No.3. Learned Single Judge was of the view that Civil Suit No. 5 of 1997 for specific performance was pending in the Court of learned Civil Judge (S.D.), Surat. He, therefore, stated as under:

"Secondly, the petition is primarily directed to secure an injunction in aid of principal relief which the petitioner has sought in Civil Suit. The petitioner cannot be permitted to indulge in multiplicity of litigation in respect of the same cause of action depending on the existence of the same title, which is the subject matter of a pending civil litigation. If the petitioner seeks relief by way of injunction to protect his possession, which he claims to be with him, from interference by respondent No.3 on any pretext, his remedy is to apply in the pending suit, and not by way of independent proceedings by invoking extraordinary jurisdiction under Article 226."

The learned Single Judge, however, gave one more ground and stated;

"Firstly, under Section 54 of the Transfer of Property Act, mere agreement to sale does not result in transfer of interest in the immovable property to the promisee. The intending transferor continues to remain owner of the property. Thus by making application for raising construction over the land in question before the Municipal Corporation, respondent No.3 was only exercising his right as an owner of the property which, unless the decree for specific performance is granted in favour of the petitioner and the sale executed in his favour, respondent No.3 is entitled to exercise."

Mr. D.D. Vyas, Senior Advocate appearing for Mr. Sudhanshu Patel, submitted that the order passed by learned Single Judge is erroneous. He submitted that the learned Single Judge ought to have granted relief in favour of the appellant.

We are, however, of the opinion that the learned Single Judge was right in observing that when a Civil Suit was pending, an appropriate course would be to approach that Court and non-exercise of extraordinary jurisdiction under Article 226 of the Constitution is not improper and it cannot be said that by observing so, the learned Single Judge has committed an error.

So far as the next contention is concerned, Mr. Vyas submitted that in view of the fact that learned Single Judge thought it fit not to exercise powers under Article 226 of the Constitution of India, he ought not to have made any observation on merits of the matter or interpreted provisions of Section 54 of the Transfer of Property Act. Mr. Shukla, no doubt, submitted that what was stated by learned Single Judge was obvious in law. We are, however, of the opinion that when the learned Single Judge did not think it fit to entertain the petition, it was not necessary to express any opinion as those observations were not strictly necessary. It is, therefore, clarified that as and when the matter will be taken up by Civil Court, it is open to the parties to take all the contentions and the Court will decide them on their own merits.

Mr. Shukla states that the appellant was not in possession of the disputed property. According to Mr. Vyas, the appellant was and is in possession and that on the basis of possessory title, he was entitled to protect his possession. We are not expressing any opinion on this aspect.

The appeal is allowed to the aforesaid extent only. No order as to costs.

No order on Civil Application.

(karan)